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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,988	12/31/2003	Duane L. McDonald	17,858.3	9975
23556	7590	07/27/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/749,988	MCDONALD, DUANE L.	
	Examiner Luan K. Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 6,7 and 15 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,8-14 and 16-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/17, 8/5, 9/17, 10/21/04; 1/4, 5/10 & 10/7/06
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)  
Other: \_\_\_\_\_

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1. Applicant's election without traverse of Group II, Figure 11B in the reply filed on 6/13/2006 is acknowledged. Applicant indicates that claims 1-5, 7-14, 16-26 read on the elected species. However, claim 7 has similar limitations as presented in claim 15 which applicant indicates that not read on the elected species. Therefore, claims 6, 7 and 15 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. It appears that claims 2-4, 20 and 22-24 are not read on the elected species. Applicant is required to provide support for the relationship between these claims and the Figure 11B in response to this Office Action, otherwise these claims will be withdrawn in the next Office Action.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, the phrase "the opening tab" (two places) lacks proper antecedent basis.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-5, 11-14 and 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tubo et al. (5,040,677; hereinafter Tubo'677). Tubo'677 discloses a package (10) enclosing a single disposable absorbent article (30) comprising a first piece of material (20) and a second piece of material (21) being operatively associated with the first piece of material to define a seal (17) and at least a portion of the first piece of material (19) and at least a portion of the second piece of material (Figure 2) extend beyond the seal to deliver an opening element.

As to claims 2-3, the first piece of material is more rigid than the second piece of material (column 3, lines 47-52).

As to claim 4, the second piece of material is defined as 20 and the first piece of material is defined as 21.

As to claims 5 and 21, Tubo'677 discloses the seal defined at least one lateral edge and at least one longitudinal edge and a portion of the opening element extended beyond at least one lateral edge of the seal and a portion of the opening element extended beyond at least one longitudinal edge of the seal (Figure 1).

6. Claims 11-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by The Japanese Patent No. 10-95481 to Narawa (hereinafter Narawa). Narawa discloses a package (1) enclosing a single disposable absorbent article (2) comprising a layer of material (3) having an interior surface, an exterior surface and configured to provide an interior space, the package defined at least two lateral seals (32, 33) and a portion of the layer of material extended beyond at least one lateral seal (Figure 9). The extended portion of the package is inherently capable to provide an opening element. Narawa further discloses the package is vacuum packed.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 8, 10, 16, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tubo et al. (5,040,677; hereinafter Tubo'677) in view of The Japanese Patent No. 10-95481 to Narawa (hereinafter Narawa). Tubo'677 discloses the package (10) as above having all the limitations of the claims except for the package being vacuum packed. Narawa shows a package (1) enclosing a single disposable absorbent article (2) comprising a vacuum packed. It would have been obvious to one having ordinary skill in the art in view of Narawa to modify the package of Tubo'677 so the package is vacuum packed for better protecting the article and also reduce the size of the package.

9. Claims 9, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tubo et al. (5,040,677; hereinafter Tubo'677) in view of Frank-Farah et al. (6,640,976; hereinafter Frank-Farah'976). Tubo'677 discloses the package (10) as above having all the limitations of the claims except for the opening element being coded such as color coded to indicate the size or type of the article. Frank-Farah'976 shows a package (10) for articles comprising color coded on the articles and instructions (34, column 5, lines 1-7). It would have been obvious to one having ordinary skill in the art in view of Frank-Farah'976 to modify the package of Tubo'677 so the

opening element includes color coded to indicate the size or type of the article to provide more convenience for the user.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 17 above, and further in view of The Official Notice. Tubo'677 as modified further fails to show the coded being tactiley coded. The Official Notice is taken of the old conventional practice of providing tactiley coded for helping the visually handicapped user. It would have been obvious to one having ordinary skill in the art in view of The Official Notice to modify the coded of Tubo'677 as modified so the coded comprises tactiley coded to provide more convenience for the visually handicapped user.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
July 23, 2006



Duan K. Bui  
Primary Examiner  
Art Unit 3728